

SAMANTHA BOWMAN

IBLA 81-471

Decided December 29, 1981

Appeal from decision of the Arizona State Office, Bureau of Land Management, declaring mining claims abandoned and void. A MC 76365 and A MC 76366.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Assessment Work--Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment--Mining Claims: Assessment Work

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file with the proper BLM office an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

The mailing of an affidavit of assessment work concerning a mining claim before the due date is not sufficient to comply with the requirements of the statute unless the evidence of assessment work is actually received by the proper Bureau of Land Management office before such date.

APPEARANCES: Samantha Bowman, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Samantha Bowman has appealed from a decision of the Arizona State Office, Bureau of Land Management (BLM), dated February 10, 1981, declaring the B.S.B. Mining Organization placer mining claim and the BSB Mining Organization lode mining claim abandoned and void. The ground for the decision was appellant's failure to file timely evidence of annual assessment work or a notice of intention to hold the claims prior to October 22, 1979, as required by 43 CFR 3833.2-1(a).

In her statement of reasons for appeal appellant asserts that a copy of her 1978-79 assessment work was mailed to BLM on the same day that it was filed and recorded in the Yavapai County Courthouse.

Appellant's mining claims were both located prior to October 21, 1976, and copies of the notices of location were properly filed for recordation with BLM on October 17, 1979. Although proof of labor for the 1978-79 assessment year was filed in the Yavapai County Recorder's Office on August 28, 1979, the case records disclose that such evidence of assessment work was not received by BLM until filed with the appeal in this case on March 24, 1981. The record does not indicate that appellant filed either evidence of assessment work or notice of intention to hold the claims on or before October 22, 1979. On October 23, 1980, BLM received copies of evidence of annual assessment work for the 1979-80 assessment year for appellant's claims.

[1] Section 314(a)(1) and (2) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a)(1) and (2) (1976), and the implementing regulation, 43 CFR 3833.2-1(a), require that the owner of an unpatented mining claim located before October 21, 1976, shall, on or before October 22, 1979, and prior to December 31 of each subsequent year, file with BLM evidence of annual assessment work or a notice of intention to hold the mining claim. Failure to file the required documents is conclusively deemed to constitute an abandonment of the mining claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). Since the record disclosed that appellant failed to file either an affidavit of assessment work or a notice of intent to hold the claims on or before October 22, 1979, BLM properly held the claims to have been abandoned and declared them void. Judy H. Genger, 59 IBLA 199 (1981).

[2] Appellant's asserted mailing of evidence of annual assessment work is not sufficient to comply with the requirements of the statute unless the assessment work evidence is actually received by the proper BLM office before the due date. The Board has repeatedly held that a mining claimant, having chosen the means of delivery, must accept the responsibility and bear the consequences of loss in transit or untimely delivery of his filings. John Silva, 59 IBLA 167 (1981). Filing is

accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f). Although appellant has submitted an affidavit of performance of annual work date stamped August 28, 1979, by the Yavapai County Recorder's Office, there is no evidence of record that BLM ever received the proof of labor prior to October 22, 1979, as required by statute.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

